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UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF NEW YORK

Case No. 11-42390-jbr

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In the Matter of:

IMAGE RENT A CAR, INC.,

Debtor.

- - - - -x

United States Bankruptcy Court

271 Cadman Plaza East

Brooklyn, New York

February 6, 2012

2:22 PM

B E F O R E:

HON. JOEL B. ROSENTHAL

U.S. BANKRUPTCY JUDGE

1

2 Matter: [29] Amended Notice of Motion (RE: related document(s)

3 [28] Motion to Compel Discovery Filed by Daniel Gershburg on

4 behalf of Digby Adler Group LLC dba Bandago. \*\*[33] Debtor's

5 Objection, [34] Transcript of Hearing, [35] Exhibit A,

6 [36]Exhibit B, [37]Amended Objection filed on 1/30

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17 BY: DANIEL GERSHBURG, ESQ.

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IMAGE RENT A CAR, INC.

1 P R O C E E D I N G S

2 THE CLERK: Matter number 53 in the case of Image  
3 Rent A Car, Inc.

4 MR. GERSHBURG: Good afternoon, Your Honor. Daniel  
5 Gershburt, representing Digby Adler Group, who is a creditor in  
6 this Chapter 7 proceeding. Image Rent A Car is the debtor.

7 Your Honor --

8 THE COURT: Whoa, let me get the rest of the  
9 appearances. Slow down, counsel.

10 MR. BALISOK: Good afternoon, Your Honor. My name is  
11 Joseph Balisok. I'm the attorney for the debtor.

12 THE COURT: Go ahead.

13 MR. GERSHBURG: Your Honor, this is a motion  
14 compelling discovery pursuant to Rule 7037. Just a little  
15 background on the case --

16 THE COURT: I don't need background; I remember this  
17 case.

18 MR. GERSHBURG: Ah, very good, Your Honor. To this  
19 date, we have not received many, if not most, of the documents  
20 that were called for in the order that you signed, Your Honor,  
21 specifically, tax returns, which were in fact filed, which the  
22 debtor's counsel and the debtor affirmed to the Court were  
23 never filed at any point. And we know this based on the  
24 documents that were produced to us from the debtor and debtor's  
25 counsel, bank records which have specific missing statements

IMAGE RENT A CAR, INC.

1     evidencing large sums of money that were deposited into other  
2     accounts of insiders as well as direct deposit statements about  
3     a year prior. There's not one sales receipt, not one rental  
4     receipt, no credit card receipt --

5             THE COURT: Where did this company do business?

6             MR. GERSHBURG: I'm sorry, Your Honor?

7             THE COURT: Where did this company do business?

8             MR. GERSHBURG: Brooklyn, Your Honor --

9             THE COURT: Okay, go ahead.

10            MR. GERSHBURG: -- for seven years. There is not one  
11     receipt of any vehicle that's been rented, any vehicle that's  
12     been sold, absolutely no business transactions whatsoever for  
13     the period of seven years.

14            The debtor claims that they provided us with bylaws,  
15     which they never have provided us with any bylaws. In fact,  
16     there's no documents whatsoever evidencing the fact that the  
17     person who signed the petition as the president, Mr. Shneior  
18     Zilberman, is in fact or was ever in fact the president of the  
19     debtor corporation.

20            There's also not one document -- they list 800,000  
21     dollars in liabilities in Schedule F. They failed to produce  
22     one document, one invoice, anything showing one dollar that is  
23     owed to any of these people. And in fact, many of these people  
24     are insiders, brother-in-law, former business partners. The  
25     business was transferred to a former partner as well.

IMAGE RENT A CAR, INC.

1           In the 2004 examination, the first day of it, which  
2   happened on November 29th, the debtor states that he found  
3   documents but he didn't turn them over because he didn't deem  
4   them to be relevant or appropriate. This is on page 92. Those  
5   documents include receipts for cars and gas, client  
6   information, information regarding credit cards, licenses,  
7   et cetera.

8           When I asked the debtor if he was ever listed as vice  
9   president of Image, after an objection from counsel he says  
10   either yes or no but what is certain is that maybe. So we've  
11   had a pretty tough time at it in terms of getting any --

12           THE COURT: Well, let me ask you a question. What's  
13   the end game here?

14           MR. GERSHBURG: Well --

15           THE COURT: I know you have litigation pending in  
16   California.

17           MR. GERSHBURG: Yes.

18           THE COURT: But this is a Chapter 7 debtor.

19           MR. GERSHBURG: Yes.

20           THE COURT: So what are you trying to accomplish with  
21   this 2004 examination at this point?

22           MR. GERSHBURG: We believe that hundreds of thousands  
23   of dollars were transferred to insiders. The debtor himself  
24   has this money, because if you look at where this money was  
25   transferred, it goes to former business partners, family

IMAGE RENT A CAR, INC.

1 members, et cetera, and it happens right before that action  
2 takes place.

3 THE COURT: And this is not your cause of action, this  
4 would be the estate's cause of action?

5 MR. GERSHBURG: Well, that's correct, Your Honor, but  
6 with respect to this bankruptcy filing, we believe that the  
7 actual petition contains glaring inaccuracies and everything  
8 was completely misrepresented in the petition itself.

9 In the 341 examination which we came to and we  
10 questioned the debtor on the record, debtor's counsel stated  
11 that he amended the petition itself to include certain things  
12 in the statement of financial affairs which should have been  
13 there. That never took place until last night at 5 p.m. after  
14 we issued our reply. They refused to even show up for a second  
15 day of examination of the 2004 after four hours of the first  
16 day. There's a litany of e-mails from myself to debtor's  
17 counsel where debtor's counsel claims he can't show up for more  
18 than two months from the time this happened.

19 THE COURT: Right, I read that, but that time's now  
20 past, so --

21 MR. GERSHBURG: Right, correct, Your Honor. And in  
22 the debtor's objection he also makes misrepresentations as to  
23 whether -- he states that he never agreed to the second day.  
24 We simply want -- you know, when in fact they did, based on the  
25 clear language of the e-mails themselves. I mean, he's just

IMAGE RENT A CAR, INC.

1 misrepresenting to the Court specifically what took place.

2 We want an opportunity, like any creditor, to find out  
3 where this money went. There aren't any other creditors, by  
4 the way. The other creditors that are listed are all insiders,  
5 and there's no -- there's no --

6 THE COURT: Wouldn't you be better off spending your  
7 time examining the financial institutions that cleared those  
8 accounts and had those funds?

9 MR. GERSHBURG: We'd love to, Your Honor, except the  
10 documents that they provided us don't encompass the Bank of  
11 America statements, for instance. They claim they provided us  
12 Bank of America statements. Debtor's counsel states this,  
13 represents this.

14 THE COURT: So you know the accounts were with Bank of  
15 America?

16 MR. GERSHBURG: No, we don't, because they've never  
17 been provided to us --

18 THE COURT: Okay.

19 MR. GERSHBURG: -- at all. I mean, we're trying, in  
20 any sort --

21 THE COURT: Where's the trustee? Who's the trustee in  
22 this?

23 MR. GERSHBURG: Mr. Messer.

24 THE COURT: And what's he doing about any of this?

25 MR. GERSHBURG: Well, after the first 2004 -- first of



IMAGE RENT A CAR, INC.

1 all, we contacted Mr. Messer after you had instructed us to on  
2 the first day. They -- after the first 2004 examination the  
3 first day, we contacted Sal LaMonica's office, who represents  
4 the trustees, and they are now very interested in this and  
5 they'd like to likely appear on the second date of the 2004  
6 examination because glaringly -- I mean, the papers  
7 themselves --

8 THE COURT: Okay, I get the message.

9 MR. GERSHBURG: Yep.

10 THE COURT: Let me hear from the other side.

11 MR. BALISOK: Thank you, Your Honor. There was a  
12 reply to my objection filed Friday night at 10 p.m.,  
13 approximately, and I was not provided with a faxed copy; I  
14 didn't have any notice of the reply. I did have a chance this  
15 morning to look at it and I have prepared an answer to some of  
16 the --

17 THE COURT: You know, I'm -- I, frankly, don't have  
18 time for this baloney.

19 MR. BALISOK: Okay, so I'll cut to the chase, Your  
20 Honor.

21 THE COURT: This is a discovery dispute.

22 MR. BALISOK: It's very --

23 THE COURT: They're entitled to the discovery.

24 MR. BALISOK: Yes, Your Honor, however, they're not  
25 entitled to something that doesn't exist. We've given them

IMAGE RENT A CAR, INC.

1 everything we have.

2 THE COURT: Then give them an affidavit --

3 MR. BALISOK: I did, Your Honor.

4 THE COURT: -- that it doesn't exist.

5 MR. BALISOK: I did, Your Honor. I brought it to the  
6 Court. I told them under oath. We went to the 341 meeting.  
7 We said under oath every single thing. I keep repeating it  
8 again and again and again and it completely falls on deaf ears.

9 Your Honor, if I might just point out a simple fact.  
10 The last time we were here you said you were not going to  
11 pre-judge the 2004 examination. I'm not asking you to -- a  
12 simple glance at the 2004 will show you that all of these  
13 questions in the reply Digby Adler Group chose not to ask in  
14 the first 2004. They chose to go back fifteen years, ask  
15 questions about management, which frankly, nobody remembers.  
16 Mr. Zilberman was bewildered, confused, frankly, extremely  
17 stressed out by the disrespect, the laughs, yelling at Mr.  
18 Zilberman, constantly telling him yes or no, you have to answer  
19 yes or no, you can't answer the way you're answering. I can  
20 rebut every single allegation he's making.

21 Let me just point out a simple fact that all the proof  
22 which I have proffered is admissible evidence. Every single  
23 allegation made is purely -- purely, on the part of Digby Adler  
24 Group, supposition, inference, theories. The trustee, when I  
25 spoke to him, Your Honor, told me that he was not interested in

IMAGE RENT A CAR, INC.

1 coming to the 2004, it cost too much, if they wanted to do it,  
2 let them go ahead and do it. If the trustee wanted to, he  
3 could have come.

4 At 4:30 in the afternoon -- I told my client we were  
5 going to be there till 7:30, minimum -- 4:30 in the afternoon  
6 he tells us he's done, he's finished, we're going to do it  
7 later. My client never consented. I may have tried to  
8 negotiate with my client something. In all my e-mails, if you  
9 see, it says I'm trying to arrange some type of understanding.  
10 But Digby Adler Group chose, by itself without any prompting  
11 from me, to refuse any of my efforts. And what I finally  
12 remembered, to be honest -- I don't have -- we did not have the  
13 burden to produce the work for Digby Adler Group.

14 When I finally got a copy of the transcript, it was  
15 clear as day, Your Honor, you said examination, you said let  
16 them be there, we don't want to do it twice. I said that to  
17 Mr. Gershbarg; deaf ears. I told him I've given you everything  
18 I have, I've given an affidavit, do you want -- you know, what  
19 more can I give you? Deaf ears.

20 I finally told my client, I begged him to go back and  
21 to do everything possible thing he could. He finally found a  
22 piece of evidence which reflected he was president. I get an  
23 e-mail from Digby Adler Group: Thank you very much, but it's  
24 not what I wanted. You're right it's not what you wanted. I  
25 don't have what you want. If I had what you wanted I would

IMAGE RENT A CAR, INC.

1 have given it to you. We would have given it to you in the  
2 first place.

3 On October -- and Your Honor, on October -- I have all  
4 the e-mails. I have a copy of everything. On Monday, October  
5 21st, 2011, I sent Digby Adler Group 288 pages, copies of the  
6 Chase Manhattan Bank, plus 98 additional pages, plus 77  
7 additional pages. I thought perhaps he was confused; maybe he  
8 couldn't open the e-mail. So today I re-produced all of those.  
9 I opened up in Adobe, I reproduced it into one document, I  
10 attached it separately again. I'm giving them everything they  
11 want. I'm not getting paid a nickel for my work. I'm doing  
12 everything possible we can, and no matter what I do there's  
13 always something else they're not happy with.

14 Your Honor, he told me at the 2004 that he was going  
15 to apply to this Court to get another three days and he was  
16 going to get it. The last thing --

17 THE COURT: How many days?

18 MR. BALISOK: Three more days of depositions. The  
19 last thing he told me before he walked out of the court, Your  
20 Honor, before he walked out of the deposition, he told me I'm  
21 not going to stop, no matter what you do, I'm going to catch  
22 it. I'll sign an affidavit under -- affidavit under per --  
23 affidavit to exactly what I'm stating right here.

24 Your Honor, my client went -- in his reply he asks for  
25 four -- he asks five questions. He didn't ask those questions

IMAGE RENT A CAR, INC.

1 during the 2004, didn't ask them to the 341. My client went to  
2 the 341. We went outside of the 341 for two hours, maybe even  
3 three -- the exact amount I don't recall -- to the trustee. We  
4 sat with him. We went over every single thing. I gave him a  
5 copy of every bank statement. I went over the tax transcript.  
6 Your Honor, I didn't have to give the tax transcript. We had  
7 no obligation. That's not what the order said.

8 I realized that it was confusing so I personally  
9 called the IRS, I said please give me a copy of every  
10 statement, just give me everything. They said what do you  
11 want? I said please give me every possible thing. Fax it to  
12 me. I got the fax into a PDF. I converted it, saved it, and I  
13 sent it directly to the Digby Adler Group. I get an e-mail,  
14 you filed a tax return, we want it. I went to my client. I  
15 said: Please, do you have it? Did you do it? He said, I  
16 swear, I swear. I said, listen, you're going to have to do it  
17 under oath, you're going to have to give an affidavit. He did,  
18 Your Honor. The Digby Adler Group is not happy.

19 I mean, I'm kind of at the point, Your Honor, where  
20 I'm not really sure whether or not, and I say this in my  
21 objection, whether or not the confusion is to -- his confus --  
22 Digby Adler Group's confusion as to our obligation to produce  
23 documents or whether or not they assumed that we're obligated  
24 to give them the documents they want. Either way, I have sent  
25 everything repeatedly. I have explained it to him on the

IMAGE RENT A CAR, INC.

1 phone.

2 THE COURT: Let me just -- let's, so the record is  
3 clear. Every document that your client has that was sought  
4 by -- in its 2004 has been provided?

5 MR. BALISOK: Yes, Your Honor. And any document which  
6 might arguably have thought -- that one could argue might be  
7 under the scope, possibly, in some connection, has also been  
8 produced.

9 THE COURT: Okay. And the trustee has whatever  
10 business records he's asked for?

11 MR. BALISOK: Your Honor, we showed up --

12 THE COURT: Just --

13 MR. BALISOK: Yes, Your Honor. Four weeks before the  
14 341 I showed up with my client and we gave him everything --  
15 everything.

16 THE COURT: Okay.

17 MR. GERSHBURG: Your Honor --

18 MR. BALISOK: Just one --

19 THE COURT: Let him finish, counsel. I don't need  
20 your interruptions. There's no jury here. Relax.

21 MR. BALISOK: Right. And Your Honor, I do apologize,  
22 I am kind of flustered. Frankly, I'm new at this. But --

23 THE COURT: That's okay. You're doing fine.

24 MR. BALISOK: Okay, thank you, Your Honor. I  
25 appreciate that.

IMAGE RENT A CAR, INC.

1           In the reply there was mention to the fact that there  
2   was an amended statement of, what's it called, of financial  
3   affairs that I told Digby Adler Group that we would submit.  
4   When we had an obligation to produce a copy of the petition to  
5   the trustee, I had met with the trustee and his accountant and  
6   I had provided him already the amended version. And when we  
7   went to the 341 I told Mr. Gershburt, I said I've given it to  
8   the U.S. -- to the trustee, if you would like a copy I can give  
9   it to you. He brought it to my point, I didn't upload it also  
10   to the Court. There was not an intent to hide anything. I  
11   gave it to the trustee already. I did upload it yesterday.

12           And the other thing that I really wanted to make sure  
13   to focus on was I may have written Chase Man -- Bank of  
14   America, but the 300 or 400 documents that I produced of bank  
15   statements may have been Chase, and I do realize I made the  
16   mistake. Mr. Gershburt was aware that I gave him about 350  
17   documents. He wasn't confused with regard to that. If he had  
18   asked me I would have been more than happy to tell him that I  
19   made the mistake, but I guess I should do it on the record now  
20   so that there's no confusion. I made a mistake and I must have  
21   given you Chase instead of Bank of America documents.

22           THE COURT: Well, I'm confused now. Is the bank --  
23   the records, are they Chase -- is it Chase records that's  
24   responsive or is it Bank of America?

25           MR. BALISOK: Chase, Your Honor.

IMAGE RENT A CAR, INC.

1 THE COURT: All right. So he has those now?

2 MR. BALISOK: Over 350 documents.

3 THE COURT: So the misspeak -- to use a Mitt Romney  
4 term -- the misspeak was you named the wrong bank?

5 MR. BALISOK: Correct, Your Honor.

6 THE COURT: Okay. All right. Thank you.

7 MR. BALISOK: Thank you.

8 THE COURT: I'll give you the last word, counsel.

9 MR. GERSHBURG: Thank you, Your Honor. I don't want  
10 to waste this Court's time. I'm sorry this is before the  
11 Court, but --

12 THE COURT: So am I.

13 MR. GERSHBURG: -- but I have to say that he's  
14 literally misrepresenting everything that took place. And the  
15 easiest way to show it to Your Honor is the fact that they  
16 claim in an affidavit signed by Mr. Zilberman that they never  
17 filed tax returns, IRS or state, but they did. They filed ten  
18 separate tax returns.

19 THE COURT: So they now have obtained from the  
20 government the transcript, because those were filed about ten  
21 minutes of 2 today.

22 MR. GERSHBURG: That's correct. They've only obtained  
23 the actual transcripts which were given to us before. The  
24 returns have not been produced and they claim they have never  
25 filed any returns, in the papers, Your Honor.



IMAGE RENT A CAR, INC.

1 In addition to that, if I may --

2 THE COURT: Well, let me ask you a question.

3 MR. GERSHBURG: Yeah.

4 THE COURT: Who -- obviously there were some returns  
5 filed. Now, I'm not sure if these were income tax returns.  
6 Some of them look like they may have been payroll tax returns.  
7 But be that as it may, if returns were filed, why is their  
8 obligation to get them?

9 MR. GERSHBURG: It is not, Your Honor. We have every  
10 desire to pay for these, but --

11 THE COURT: So if they say they don't have them --

12 MR. GERSHBURG: Right.

13 THE COURT: -- isn't that the end of it?

14 MR. GERSHBURG: No, Your Honor, if they're stating --  
15 if the record itself reflects the fact that they did in fact  
16 file them. And it would be very easy to obtain them. It would  
17 take one call to the IRS. I mean, this is a company that  
18 grossed over --

19 THE COURT: So why can't the trustee do that?

20 MR. GERSHBURG: I don't know if the trustee is aware  
21 of the fact that this actually took place, Your Honor.

22 THE COURT: Do you have a phone?

23 MR. GERSHBURG: Yes.

24 THE COURT: I mean, the fact of the matter is their  
25 burden is not to do all your work for you. If the trustee has

IMAGE RENT A CAR, INC.

1 a perfect right to these returns, and if they've been lost or  
2 mislaid, then the trustee can go to the IRS. You don't need  
3 this debtor to do that.

4 MR. GERSHBURG: Your Honor, we're not looking for  
5 that. It's just a pat --

6 THE COURT: Yes, you just told me you were.

7 MR. GERSHBURG: It's a pattern of trying to figure out  
8 what's there so we can find it ourselves. For instance,  
9 debtor's counsel just represented that it gave me every single  
10 bank statement. He didn't. He didn't because --

11 THE COURT: You said that. He didn't say he gave you  
12 every -- he said he gave you everything he had. But there is a  
13 difference.

14 MR. GERSHBURG: I understand, Your Honor, but we  
15 didn't know that, based on the fact that he wrote Bank of  
16 America in the papers. And he --

17 THE COURT: All right, so now you know that that's  
18 been fixed.

19 MR. GERSHBURG: I understand that. And as for the  
20 second day of the 2004 examination, Your Honor, we had multiple  
21 e-mails, multiple conversations about --

22 THE COURT: I read some of them. I read some of them.

23 MR. GERSHBURG: Right. And for him to state on the  
24 record that --

25 THE COURT: Well, what do you say about this mocking

IMAGE RENT A CAR, INC.

1 and the nastiness and the way you -- I don't know whether it  
2 was you or somebody in your office -- treated the debtor and  
3 his counsel.

4 MR. GERSHBURG: I would never treat the debtor in a  
5 mocking fashion. In fact, he was there with a Hebrew  
6 interpreter. We were trying to elicit a simple answer of:  
7 Have you ever been the president of Image Rent A Car? A simple  
8 question as such, and he simply refused to answer these  
9 questions, which required us to ask them again and again. We  
10 have no --

11 THE COURT: So it seems to me -- if after reading  
12 this, and you know I love you guys, you think that I've got  
13 nothing to do but stay up all night every night and read this  
14 junk that you file at the last minute. After I read through  
15 this stuff and decide whether -- if I decide there's going to  
16 be another examination, it's obvious to me it's going to have  
17 to take place in that room right there with a judge in  
18 residence to deal with this stuff. Because I'm not going to  
19 have that sort of conduct. I've never had anybody even suggest  
20 that. So the mere fact that he's suggesting it is troubling.

21 MR. GERSHBURG: I understand that, Your Honor. I'm  
22 just simply stating that it's completely misrepresented, that  
23 that did not take place -- that that did not actually take  
24 place during that --

25 THE COURT: Well, you understand that what you're

IMAGE RENT A CAR, INC.

1 basically calling is you're calling your brother a liar.

2 MR. GERSHBURG: I am in fact saying he's  
3 misrepresenting this, yes.

4 THE COURT: Well, that's the same thing.

5 MR. GERSHBURG: Yeah.

6 THE COURT: All right. Well, I'll see what -- I hope  
7 some of this stuff is on the record, because if it is it's  
8 going to be very easy to see. I will take this matter under  
9 advisement. I will read the -- do not file anything else; I  
10 will not read anything else. I will read -- and then I will  
11 enter an order. And if there is going to be another hearing --  
12 another day, and it will be here, you will be walked in without  
13 your cell phones, without food or water, we will turn the heat  
14 up and make you as uncomfortable as possible. And you think  
15 I'm kidding. But I will take this matter under advisement and  
16 give you my decision as soon as I can. Thank you.

17 MR. GERSHBURG: Thank you, Your Honor.

18 MR. BALISOK: Thank you, Your Honor.

19 (Whereupon these proceedings were concluded at 2:39 PM)

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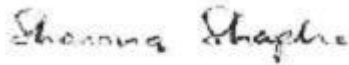
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C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript is a true and accurate record of the proceedings.



---

SHARONA SHAPIRO

AAERT Certified Electronic Transcriber CET\*\*D 492

eScribers

700 West 192nd Street, Suite #607

New York, NY 10040

Date: March 10, 2012

## IMAGE RENT A CAR, INC.

Case No. 11-42390-jbr  
February 6, 2012

	5:20	8:11,12,15;15:14,21, 24;18:16	5:8	<b>clear (3)</b> 7:25;11:15;14:3
<b>1</b>	<b>9</b>	<b>amount (1)</b> 13:3	<b>brother (1)</b> 20:1	<b>cleared (1)</b> 8:7
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